



Serial No.01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No.23 of 2025

Date of order : 10.06.2026

Shri Jawhar T. Mordani,
S/o (L) Tikamdas T. Mordani,
R/o Oakland, Shillong – 793001,
East Khasi Hills District.
Meghalaya.

.....Petitioner

-VERSUS-

Smti. Sushila Devi Agarwal,
W/o Shri Ram Gopal Agarwal,
R/o G.S. Road,
Shillong – 793001.
East Khasi Hills District,
Meghalaya.

.....Respondent

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Sen, Adv. With
Mr. S. Paul, Adv.

For the Respondent(s) : Mr. R.K. Agarwal, Sr. Adv.
Dr. P. Agarwal, Adv.

Judgment and Order (Oral)

1. Heard Mr. S. Sen, learned counsel appearing for the petitioner and Mr. R. K. Agarwal, learned Senior counsel assisted by Dr. P. Agarwal, learned counsel appearing for the respondent.



2. By this revision petition, the petitioner has assailed the impugned order dated 21.07.2025 passed in Misc. Case No. 76 (H) 2024 arising out of Ejectment Suit No. 11 (H) of 2017 allowing the application of the respondent under Order XVI Rule 1 Sub-Rule 3 read with section 151 of the Code of Civil Procedure, 1908 (CPC).

3. The brief facts of this case are that the respondent as plaintiff instituted Ejectment Suit No. 11 (H) of 2017 against the petitioner before the Court of the Assistant District Judge, Shillong. On 18.05.2023 the respondent filed an application registered as Petition No. 117 of 2023 under Order XVI rule 1 Sub-rule 3 read with section 151 CPC for allowing the respondent to adduce the evidence of one Shri. Ram Gopal Agarwal and Shri. Frank Kenneth Lyngdoh whose names were not reflected in the list of witnesses submitted by the respondent. The petitioner objected to the said prayer by filing a show-cause. The learned Trial Court, after hearing the parties, dismissed the Petition No.117 by the order dated 04.09.2023. The order dated 04.09.2023 was not challenged before any higher forum. However, on 28.11.2024, the respondent filed another application under Order XVI rule 1 sub-rule 3 read with section 151 CPC registered as Misc. Case 76 (H) of 2024 before the Trial Court for allowing the respondent to adduce the evidence of abovenamed Shri. Ram Gopal Agarwal by replacing (L) Harikishan Agarwal @ Harikishan Agarwala. The petitioner filed his show-cause against the said application. The learned Trial Court, after hearing the parties, allowed the same by the impugned order dated 21.07.2025. Being aggrieved, the petitioner has preferred this revision petition.

4. The prime contentions raised in this revision petition appears to be based on the principle of *res judicata* and question of non-consideration of delay in filing the application seeking adduction of evidence of Shri. Ram Gopal Agarwal. The learned counsel for the petitioner submits that the Trial Court resorted to improper exercise of jurisdiction by passing the impugned



order without adjudicating the specific issue of application of *res judicata* and the question of inordinate delay in filing the application. He submits that once the Trial Court by an earlier order dated 04.09.2023 had rejected the prayer for adducing evidence of Shri. Ram Gopal Agarwal in exercise of its jurisdiction under Order XVI rule 1 sub-rule 3 read with section 151 CPC, the second application under the same provision of law in respect of the same witness could not have been allowed. He further submits that the Trial Court failed to exercise its proper jurisdiction by ignoring the question of delay which was vital for considering the prayer made in the application. He, therefore, submits that the learned Trial Court has committed a gross error in passing the impugned order and prays that same may be set aside and quashed.

5. The learned Senior counsel appearing for the respondent, on the other hand, contends that the principle of *res judicata* has no application in the present scenario as the matter concerns only procedural aspects and not the substantial right of the parties. By referring to the provision of section 105 CPC and the decision of the Apex Court in *Channappa (D) through LRs. Versus Parvatewwa (D) through LRs, (2026) 0 INSC 343*, he submits that the impugned order cannot be considered to have attained finality and does not tantamount to a final adjudication of rights. He submits that no prayer was made by the respondent for obtaining any summons for attendance of any witness and the learned Trial Court, being conscious of the fact, has allowed to adduce evidence of Shri. Ram Gopal Agarwal not strictly in exercise of jurisdiction under Order XVI rule 1 sub-rule 3, but in view of provision of rule 1A of Order XVI which allows any party to bring any witness to give evidence or to produce documents. He further submits that mentioning of wrong provision or non-mentioning of a provision of law in an application does not by itself invalidate an order and in support thereof he places reliance on the decisions of *P.K. Palanisamy Vrs. N. Arumugham and Anr, 2009 AIR SCW 5385* and *Usmaw Khwan Village Dorbar Vrs. State of Meghalaya, AIR*



2026 Meghalaya 56. To impress upon this Court that the legislature did not put a total prohibition on the party to produce the witnesses, he cites the decision of *Lalitha J. Rai Vrs. Aithappa Rai*, (1995) 4 SCC 244. Further, the decision of *Nandi Infrastructure Corridor Enterprises Ltd. Vrs. B. Gurappa Naidu*, (2026) 0 INSC 434 is also placed into service to project limits of jurisdiction of the High Court under Article 227 of the Constitution of India. He concludes by submitting that in view of the settled position of law, no illegality can be attributed to the impugned order and the present revision petition, being devoid of merits, is liable to be dismissed.

6. Perusal of the materials on record reveal that the Misc. Case No. 76 (H) of 2024 was filed by the respondent by invoking Order XVI rule 1 sub-rule 3 read with Section 151 CPC for allowing the respondent to adduce the evidence of Shri. Ram Gopal Agarwal. An earlier application bearing Petition No. 117 of 2023 was also preferred by the petitioner under the above-mentioned provision of law for adduction of evidence of Shri. Ram Gopal Agarwal and another witness, which came to be rejected by the order dated 04.09.2023. The order of rejection was not challenged before any other higher forum. Hence, the Misc. Case No. 76 (H) of 2024 was the second application before the Trial Court for allowing the petitioner to adduce evidence of Shri. Ram Gopal Agarwal after rejection of the first one. The only difference between the two applications is that while petition No. 117 of 2023 was filed by contending that the name of Shri. Ram Gopal Agarwal was left out from the list of witness due to bonafide mistake, the plea taken in the Misc. Case No. 76 (H) of 2024 was that as one witness in the original list of witnesses, namely, Shri. Harikishan Agarwal passed away on 21.09.2023, he be replaced by Shri. Ram Gopal Agarwal as a witness in the case. There appears no provision in Order XVI rule 1 sub-rule 3 which deals with substitution of witness; it only deals with the Court's discretionary power to allow a party to call additional witnesses who were not included in the original list, provided the party shows



sufficient cause for the omission. Hence, any permission granted by the Court under the aforesaid provision of law has to be with regard to additional witness and not substituted witness.

7. Nothing has been brought into record to point out that the respondent raised the plea of filing of Misc. Case No.76 (H) of 2024 under wrong provision of law during the hearing of the application before the Trial Court. The learned Trial Court, after hearing the parties, by relying on the proposition of law laid down in the case of *Mange Ram Vrs. Brij Mohan and Others (1983) 4 SCC 36*, allowed the respondent to adduce evidence of Shri. Ram Gopal Agarwal. In the case of *Mange Ram (Supra)*, the Apex Court held that sub-rule 3 of rule 1 and rule 1A operate in two different areas and cater to two different situations. Sub-rule 3 of rule 1 confers wider jurisdiction on the Court to cater to a situation where the party has failed to name the witness in the list and yet the party is unable to produce him or her on his own under rule 1A and in such a situation the party of necessity has to seek the assistance of the Court under rule 3 to procure the presence of the witness. In the present matter, the respondent in Misc. Case No. 76 (H) of 2024 has nowhere made a statement that Shri. Ram Gopal Agarwal was under her control and he would be brought in the Court as a witness without seeking any assistance from the Court.

8. Although, interlocutory or procedural orders do not attract full statutory application of *res judicata* under section 11 of the CPC, general principles of *res judicata* apply across different stages of the same suit. If the first application to summon a witness was heard on its merits and rejected because of failure to show sufficient cause or on the ground of delay, a second application repeating the same facts, logic or arguments cannot be filed.

9. It is clear from the impugned order that the learned Trial Court did not allow the application after being satisfied that sufficient cause was shown for the omission to mention the name of Shri. Ram Gopal Agarwal in the original



list, but on the basis of the provision of rule 1A of Order XVI CPC. As there remains no confusion that sub-rule 3 of rule 1 and rule 1A of rule XVI operate in two different areas and cater to two different situations, the Misc. Case No. 76 (H) of 2024 could not have been decided by applying the underlying principle of provision of rule 1A of Order XVI CPC.

10. The authorities cited by the learned Senior Counsel do not deal with the situation where a second application under Order XVI rule 1 sub-rule 3 was considered and allowed by the Court. The question of mention of wrong provision of law and treating the application of the respondent under rule 1A of Order XVI CPC or Section 151 CPC also does not arise as there is no legal requirement of passing any prior order by the Court for bringing any witness to give evidence or to produce documents without applying for summons in terms of rule 1A of Order XVI.

11. For what has been discussed above, the impugned order dated 21.07.2025 is set aside and quashed. The review petition is allowed without prejudice to the right of the respondent under rule 1A of Order XVI CPC.

12. No costs.

Judge

Meghalaya
10.06.2026
"Abhinandan,PS"